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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,062	10/09/2003	Jay S. Walker	02-034	8164

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EXAMINER	
RENDON, CHRISTIAN E	

ART UNIT	PAPER NUMBER
3714	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/682,062	WALKER ET AL.	
	Examiner	Art Unit	
	CHRISTIAN E. RENDÓN	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 May 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-10 and 18-48* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-10 and 18-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This office action is in response to the amendment filed on 5/8/09 in which applicant has amended claims 2, 18, 34-35, 38; added claims 39-48; responded to the claim rejections. Claims 2-10 and 18-48 are still pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-10, 34-40 and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giobbi (US 6,749,510) in view of Nguyen (US 2002/0071557 A1).

1. Regarding claims 2 and 39-40, the art teaches a centralized gaming system consisting of a central **server operatively connected to** a plurality of **gaming devices** (Giobbi: abstract). The disclosed server monitors the gaming devices to collect game activity data (Giobbi: fig. 6, 104). The art teaches configuring a gaming device based on an evaluation of said data (Giobbi: fig. 6; 106, 108) in an attempt to maximize the earnings (Giobbi: col. 2, lines 56-58). In other words, the art modifies the available games for play (Giobbi: col. 10, lines 13-15) based on historical data that establishes a statistical expectancy towards collected revenue from a certain game for certain locations (Giobbi: col. 10, lines 23-29) and for certain time periods (Giobbi: col. 10, line 40-43). Based on the results, the server will update the current game or settings of the gaming device to a second game (Giobbi: col. 10, lines 51-54) and/or setting such as low volatility and minimum wager amount (Giobbi: col. 10, lines 41-42). Thus the art teaches **determining a measure of profitability** (collected data regarding revenue) for **the use of a first feature** or game **on a first gaming device.** The feature is **disabled**

based on the evaluated **difference between a measure of profitability and benchmark** established by the casino's revenue goal or past results (Giobbi: col. 2, lines 55-58). In addition, the art teaches authenticating the download software or games (Giobbi: col. 2, lines 7-8). However remains silent towards **a computing device outputting over the network an authentication code to disable a feature**. Nguyen discloses a server that authenticates a message that was sent by a gaming machine (Nguyen: par. 58, lines 1-5). Once the received message is decrypted using a private asymmetric encryption key the data is processed (Nguyen: par. 58, lines 5-10). Thus the disclosed gaming machine teaches **outputting an authentication code over a network**. An ordinary artisan would have combined Giobbi with Nguyen due to the teachings in authentication of data. Thus the art combination would have a **gaming device output an authentication code** to a server when a **feature is disabled** since an ordinary artisan would recognize the need to establish a level of security to prevent illegal access to the gaming device (Nguyen: par. 55, lines 12-22).

2. Regarding claims 3-4 & 6-10, the art discloses configuring a bank or plurality of gaming devices simultaneously (Giobbi: col. 10, lines 46-47). Thus the reference teaches **disabling the first feature on a second gaming device.** In addition, the Examiner views altering the game of terminal for another game (Giobbi: col. 10, lines 50-54) as teaching **enabling a second feature** or game **on a first gaming device based on the** calculated **difference.** Furthermore a game is considered a **product that is offered to a player** that may results in a winning **outcome** based on a **payout table** (Giobbi: col. 7, lines 49-50).

3. Regarding claim 5, the prior art allows a player access to their preferred game (Giobbi: col. 10, lines 55-57) to prevent forcing a player to walk around the casino in search for their game (Giobbi: col. 2, lines 13-15). Thus the art teaches **enabling a second feature** (preferred game) **on the first gaming device even if the first feature should not be disabled.**

4. Regarding claims 34-37 and 43-44, the limitations that are similar to ones found in claim 2 are rejected under the same rational. The art teaches **accumulating data that relates to usage into a memory device** (Giobbi: col. 4, lines 24-26). In addition, the art contains a **server** connected to a **gaming device over a network** thus the two are **operatively connected** allowing for the server to **facilitate the wagering game** (Giobbi: abstract). Furthermore, a **message** containing an **authentication code based on the data is outputted** to a server (Nguyen: par. 58, lines 1-5) or **operator**. The art teaches maintaining hardware and software measures to prevent illegal access of the gaming device and/or server (Nguyen: par. 41, lines 10-15). Thus an ordinary artisan would **output a message when the authentication code fails to correspond with the data** in an attempt to inform an authority of a possible situation.

5. Regarding claims 38 and 45-48, the limitations that are similar to ones found in claim 2 are rejected under the same rational. The art teaches **generating a first authentication code by a gaming device** (Nguyen: par. 58, lines 1-5) then the server confirms its authenticity by producing a check sum of the data that is compared with the sent check sum (Giobbi: par. 61, lines 5-8). In other words, a **second authentication code** (check sum) is **generated based on the received data and compared with the first authentication code.** Once the message is confirmed the server may output the sent request by **outputting** a license (Nguyen: par. 61, lines 15-17) **over the network. Claims 18-33 and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giobbi and Nguyen in view of DeMar (US 5,257,179).**

6. The above description of the art combination and its limitations are considered within this art rejection as well. Nguyen teaches a gaming machine securely communicating with a remote server over a public network (Nguyen: abstract). The reference provides per-use (Nguyen: par. 48, lines 20-26) game licenses to a gaming machine from a (Nguyen: par. 15, lines 8-11) remote license server (Nguyen: par. 16, lines 22-23). The remote server is also able to accept electronic fund transfer

request & information from a gaming device (Nguyen: par. 50, lines 6-10). Thus the reference teaches a gaming machine capable of sending a monetary value to a remote location through the Internet.

7. DeMar also teaches recording game play statistics by an audit system as a means to determine a selective pricing system (DeMar: abstract) based on a game's financial performance (DeMar: col. 2, lines 30-33) during certain times of the day (DeMar: col. 6, lines 45-46). Since customers have historically paid to play the game at the increased price the revenue from the game is maximized (DeMar: col. 6, line 65).

8. Regarding claims 18 & 41-42, the limitations that are similar to ones found in claim 2 are rejected under the same rational. Even though the art combination requires paying developers through per-use licenses based on game usage data (Nguyen: par. 59, lines 5-7), it remains silent towards basing the payments on the profitability of said games; in other words the developers earning commission. DeMar teaches **determining a measure of usage of a game** by tracking the number of games played and money collected at a gaming machine (DeMar: col. 2, lines 8-10). Based on a **payment rate** the prior art provides a percentage of the generated revenue to the establishment and game owner (DeMar: col. 1, lines 12-16), thus **determining a payment amount to a party that is based on the measure of performance and the associated payment rate**. It would have been obvious to an ordinary artisan to include DeMar in the art combination as a means of further clarifying that a pay per-use game license fee is influenced by the game's performance in terms of frequency of play or collected revenue (Giobbi: col. 10, lines 33-34) when pay for a license fee is based on per-use & time period (Nguyen: par. 48, lines 20-26) per gaming machine (Nguyen: par. 17, lines 1-3). In addition, Nguyen teaches a game license server sending a reply message that allows a gaming machine to present the requested game (Nguyen: par. 48, lines 17-19). Thus teaching **providing a**

signal by the provider to permit the use of the first game. The Examiner views the reply message as an act of receiving **an authorization code** (Nguyen: par. 20, lines 9-11).

9. Regarding claim 19, the art combination discloses a game or **feature developer** and casino establishment (DeMar: col. 1, lines 12-16) or **vendor of the feature**.

10. Regarding claims 20-21 and 32, Giobbi teaches configuring a game into a low volatility version in an attempt to increase revenue (Giobbi: col. 10, lines 40-42). This teaching expresses **determining a first** (low volatility) **and second theoretical win** (current volatility) **based on play of a gaming device while a feature has been inactive and active** respectively (all from historical data). The new established **incremental theoretical win** based on first and second attempts to offer player's an incentive to play while maximizing revenue (Giobbi: abstract). Additionally, it is well known in the art that two numbers must have **common units** for a meaningful comparison to occur.

11. Regarding claims 22-23 & 33, DeMar teaches basing price increases on historical data in an attempt to maximize game revenue (DeMar: col. 6, line 65). Thus this teaching expresses **determining a second amount** (old maximum wager) **wagered based on play of a gaming device while a feature is active** (from historical data) and **determining an incremental amount** (new maximum wager) **based on second and first amount** (current maximum wager). The comparison of two numbers having **common units** is well known in the art.

12. Regarding claims 24-26 & 28, the art teaches the use of accounting meters to track credit in/out/played/won for each remote gaming device (Giobbi: col. 4, lines 24-26). Thus the art teaches **determining a measure of profitability** or money earned by a **gaming device** (Giobbi: col. 10, lines 32-34), **an amount wagered and paid out** (credit in/out) **while the feature is active.** In addition, the art teaches **determining a difference between the amount wagered and paid out** since this calculation represents the money earned by a game (Giobbi: col. 4, lines 24-26). For clarification purposes, credit in and **coin-in** are considered by the Examiner as equivalent.

13. Regarding claim 27, the art teaches the use of player tracking software to record play data (Giobbi: col. 6, lines 45-47) such as wager amount (Giobbi: col. 4, lines 24-26). As stated above, the art evaluates the performance (frequency of play or money earned) statistics of the games (Giobbi: col. 10, lines 27-34). An **average** is considered a form of statistical evaluation that measures the central tendency of a data set. As stated above, the prior art combination teaches **determining a wager amount while a feature is active** (Giobbi: col. 4, lines 24-26) for the purpose of setting a selective pricing system (DeMar: abstract) based on a game's financial performance (DeMar: col. 2, lines 30-33) during certain times of the day (DeMar: col. 6, lines 45-46) or **unit of time**. Therefore the art combination teaches **determining an average amount wagered per play** or coin-in, **per player** (through the tracking software), **per unit of time** or time period and frequency or **rate of play**.

14. Regarding claim 29, DeMar teaches a payment rate for a game based on a **percentage of the revenue** (DeMar: col. 1, lines 12-16). Nguyen teaches **license fee based on time period** (Nguyen: par. 48, lines 20-26) **per gaming machine** (Nguyen: par. 17, lines 1-3). Thus the art combination teaches **determining a measure of performance** (Giobbi: col. 10, lines 33-34) based on **a period of time the feature is active**.

15. Regarding claims 30-31, the art tracks the amount of credit a game pays out (Giobbi: col. 4, lines 24-26). Thus teaching **offering a transaction amount or number in accordance with the feature that is accepted** by the player.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Examiner's Note

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to

render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims is patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN E. RENDÓN whose telephone number is (571)272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dimtry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/
Supervisory Patent Examiner, Art Unit 3714

/CHRISTIAN E RENDÓN/
Examiner Art Unit 3714
CER